Dynatron/Bondo Corporation *and* Amalgamated Clothing and Textile Workers Union, AFL–CIO. Case 10–CA–25405

November 8, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On August 8, 1991, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 10–RC–13908. (Official notice is taken of the ''record'' in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On September 23, 1991, the General Counsel filed a Motion for Summary Judgment. On September 30, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of its objections to the election and the Board's disposition of a certain challenged ballot in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). There are no factual issues regarding the Union's request for information because the Respondent admitted that it refused to furnish the information. Respondent also denies that the information requested is relevant, i.e., the names, addresses, classification rates of pay, telephone and social security numbers of all unit employees, copies of documents describing certain current employee benefits and rules, and a list of other benefits. With the exception of social security numbers we do not agree with Respondent as it is well settled that such information regarding unit employees is presumptively relevant to and necessary for purposes of collective bargaining.[1] Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Georgia corporation, with an office and place of business located in Atlanta, Georgia, manufactures automobile filler and other automotive products. During the past calendar year, a representative period, Respondent sold and shipped goods from its Atlanta, Georgia facility valued in excess of $50,000 directly to customers located outside the State of Georgia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held September 8, 1989, the Union was certified on June 5, 1991, as the collective-bargaining representative of the employees in the following appropriate unit:

> All production and maintenance employees employed by the Respondent at its Atlanta, Georgia facility, including all quality control technicians, but excluding all office clerical employees, technical employees, laboratory and professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

[1] As the Respondent is therefore clearly obligated to provide this other information to the Union, we will order it to do so. However, as we find that the social security numbers requested by the Union are not presumptively relevant, we will not at this time order the Respondent to provide the numbers to the Union, and will instead remand this aspect of the case. *Sea-Jet Trucking Corp*., 304 NLRB 67 (1991).

Member Oviatt also would deny the Acting General Counsel's Motion for Summary Judgment with respect to the telephone numbers. In his view, it has not been established that the telephone numbers are relevant. Although the Board in dictum has stated that telephone numbers are presumptively relevant, Member Oviatt has found no decision where the Board has squarely addressed the issue and has resolved it on a reasoned basis.

B. *Refusal to Bargain*

Since June 7, 1991, the Union has requested the Respondent to bargain and to furnish information, and, since June 7, 1991, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after June 7, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the relevant information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Dynatron/Bondo Corporation, Atlanta, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Amalgamated Clothing and Textile Workers Union, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement:

> All production and maintenance employees employed by the Respondent at its Atlanta, Georgia facility, including all quality control technicians, but excluding all office clerical employees, technical employees, laboratory and professional employees, guards and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees including the information it requested on June 7, 1991, with the exception of social security numbers.

(c) Post at its facility in Atlanta, Georgia, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the allegation that the Respondent unlawfully failed to furnish unit employees' social security numbers is severed and remanded to the Regional Director for further appropriate action.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Amalgamated Clothing and Textile Workers Union, AFL–CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its

role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All production and maintenance employees employed by the Respondent at its Atlanta, Georgia facility, including all quality control technicians, but excluding all office clerical employees, technical employees, laboratory and professional employees, guards and supervisors as defined in the Act.

DYNATRON/BONDO CORPORATION